circumstances, the sale is not consummated because of the default of the vendor the broker is still entitled to his commission. *Dworski* v. *Lowe,* 88 Conn. 555. If a binding contract has been entered into between the vendor and the purchaser, and the purchaser defaults, the broker may still take his commission. *Fox* v. *Ryan,* 240 Ill. 391; *Payne* v. *Ponder,* 139 Ga. 283. But it will be noted that in the principal case there was no binding contract and the purchaser defaulted. The court quoted from several cases in support of its decision, but in all of them it was the vendor who defaulted and not the purchaser. The reasoning of such cases would not seem to apply when the purchaser defaults. *Parker* v. *Walker,* 86 Tenn. 566; *Platt* v. *Kohler,* 65 Hun (N. Y.) 557; *Simrall* v. *Arthur,* 13 Ky. L. Rep. 682. On facts similar to those of the principal case it seems to be generally held that the broker is entitled to no commission. *Kronenberger* v. *Bierling,* 76 N. Y. S. 895; *Hildenbrand* v. *Lillis,* 10 Colo. App. 522; *Wilson* v. *Mason,* 158 Ill. 304 (*dictum*); *Griffith* v. *Bradford* (Tex.), 138 S. W. 1072. But see *Heinrich* v. *Korn,* 4 Daly's Rep. (N. Y.) 74. This is especially true if the broker was authorized "to procure an exchange," *Lanham* v. *Cockrell* (Tex.), 152 S. W. 189; or was to be paid when the property was sold. *Pfanz* v. *Humburg,* 82 Ohio St. 1; *Parmly* v. *Head,* 33 Ill. App. 134. It would seem, consequently, that the principal case is contrary to the weight of authority, and it is submitted that the holding defeats the intent of the vendor, which probably was to pay the broker only if a purchaser was produced who would actually consummate the sale or who would so bind himself by contract that he would be liable if he did not do so. If, however, it can be truly said that the vendor accepted the purchaser and assumed the risk of his failure to perform, then the latter's subsequent default should not affect the broker's right to his commission, and the case would seem correctly decided.

CARRIERS—DELIVERY MUST BE TO RIGHT PARTY.—Plaintiff had in his employ a traveling salesman who turned in fictitious orders on which goods were shipped by the plaintiff to the firms supposed to have ordered them. The plaintiff's salesman, by some means not disclosed by the evidence, got possession of the bill of lading, which he presented to the defendant, and he having executed receipts in his own name as agent for the consignee, the goods were delivered to him. Plaintiff sued for conversion. *Held,* as the goods were not delivered to either of the consignees named in the non-negotiable bill of lading, or to a person lawfully entitled to the possession of the goods, as required not only by the common law but by §§ 4624 and 4625, G. S., in the Uniform Bill of Lading Act, the defendant was liable. *Hartford Distillery Co.* v. *New York, etc., Ry. Co.* (Conn., 1921), 115 Atl. 488.

The common carrier, like any other bailee, must upon the termination of the bailment dispose of the bailed property in accordance with directions of the bailor; and no circumstance of fraud, imposition or mistake will excuse the carrier from liability for delivery to the wrong person. 2 HUTCH. ON CAR. 739. The fraud may, however, be such that for purposes of delivery the impostor is the right party. Where the fraud is upon the carrier, as in

the case of goods delivered to one under a forged order, the rule is uniform that the fraud furnishes no excuse. 37 L. R. A. 177 and cases there cited. Where the fraud is upon the consignor, however, the cases are in conflict. A typical case is where a swindler assumes the name of a reputable person, and orders goods in the name of that person, which are delivered by the carrier to the impostor. In such a case is the right party the one with whom the consignor carried on the correspondence, or the person whose name the swindler assumed? One line of cases holds the right party to be the person whose name was assumed. *Pacific Express Co.* v. *Shearer,* 160 Ill. 215; *American Express Co.* v. *Fletcher,* 25 Ind. 492. Another line of cases holds the right party to be the one with whom the consignor carried on the correspondence. *Samuel* v. *Cheney,* 135 Mass. 278; *The Drew,* 15 Fed. 826. The court in *Samuel* v. *Cheney, supra,* saying, "we think the more correct statement is that the consignor intends to send the goods to the man who ordered them and agreed to pay for them, supposing erroneously that he was Arthur Swannick." The above rule is qualified to the extent that if the carrier, in the exercise of reasonable diligence, should have known that a fraud was being perpetrated upon the consignor he will be held liable for delivering to the impostor. *L. & N. Railroad Co.* v. *Fort Wayne Electric Co.,* 108 Ky. 113; 2 HUTCH. ON CAR. 750. And the carrier cannot exempt itself from liability for this negligence by special contract. In *Western Union Telegraph Co.* v. *Lapenna* (Ind., 1921), 133 N. E. 144, money was sent with the understanding that the defendant could deliver the money to "such person as its agent believed to be the above named payee." Defendant contended that it was absolved from liability upon payment to one whom its agent in fact believed to be the payee, even though by the exercise of due care the agent should have known otherwise. But the court held that notwithstanding the waiver of identification the carrier was bound to exercise reasonable care. As the carrier in the principal case was the one fraudulently imposed upon, and it failed to deliver to the right party, the fraud constituted no defense.

CARRIERS—WRITTEN NOTICE OF CLAIM OF DAMAGES BY INJURED PASSENGER.—Action for personal injuries to plaintiff, who was riding on a driver's pass, caused by a collision on defendant's road. In consideration of the pass plaintiff agreed that the carrier should not be liable for personal injury unless notice in writing of the claim was sent to the general manager within thirty days after injury. Defendant's claim agent called on plaintiff in a hospital where he was being treated for his injuries, but plaintiff said he was not in condition to talk to him. No written notice was given. *Held,* the requirement of notice in writing was valid, and there could be no recovery. *Gooch* v. *Oregon Short Line R. Co.* (U. S., Feb. 27, 1922).

After such decisions as *So. Pac. Co.* v. *Stewart,* 248 U. S. 446, 17 MICH. L. REV. 420, it seems strange that such a question as the present should be carried to the Supreme Court of the United States; stranger still that it should be decided with three justices dissenting. That such regulations are